

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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The Authors Guild, Inc., Association of American :
Publishers, Inc., et al., :
Plaintiffs, : Case No. 05 CV 8136-(DC)
v. : ECF Case
Google Inc., :
Defendant. :
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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO
ADJOURN OCTOBER 7, 2009 FINAL FAIRNESS HEARING AND SCHEDULE
STATUS CONFERENCE**

Plaintiffs in the above-captioned matter submit this memorandum in support in support of their motion for an adjournment of the final Fairness Hearing, currently scheduled for October 7, 2009, so that the parties can (a) amend the Settlement Agreement and (b) seek approval of an amended settlement agreement.

As of September 8, 2009, approximately 400 objections, briefs of amici curiae, and statements, both in support of and in opposition to the Settlement Agreement, have been filed with the Court. These include hundreds of objections from individuals and corporate entities within and from outside of the United States, from the Federal Republic of Germany and the Republic of France, and from the Attorneys General of six states (Connecticut, Kansas, Missouri, Pennsylvania, Texas, and Washington).

In addition, as the Court is aware, the Antitrust Division of the United States Department of Justice (“DOJ”) has been investigating the proposed Settlement and other federal government

agencies, including the U.S. Copyright Office in a hearing before the House of Representatives Committee on the Judiciary, have publicly expressed views on the Settlement.

Last Thursday, September 17, 2009, plaintiffs and Google met with senior DOJ officials. In that meeting, the parties expressed their commitment to work with the DOJ regarding several concerns with the Settlement Agreement.

The next day, on September 18, 2009, the United States Attorney for the Southern District of New York, in response to this Court's Order of July 2, 2009, filed a Statement of Interest of the United States of America Regarding Proposed Class Settlement ("U.S. Statement of Interest"). Of key importance is that the U.S. Statement of Interest confirmed the DOJ's reciprocal desire to work with the parties to address concerns raised by the United States. (U.S. Statement of Interest at 1.) The U.S. Statement of Interest states that the United States government supports the aims of the Settlement and "is committed to working with the parties constructively with respect to alterations the parties may propose." (*Id.*) It later restates this position: "The United States looks forward to working with the parties to address [its] concerns across the entire spectrum of provisions in the Proposed Settlement." (*Id.* at 8.)

In short, both the United States government and the parties are agreed: "[A] properly structured settlement agreement in this case offers the potential for important societal benefits." (U.S. Statement of Interest at 14.) Therefore, as the United States government put it, no one wants "the opportunity or momentum to be lost." (*Id.* at 4.)

It is because the parties wish to work with the DOJ to the fullest extent possible that they have engaged, and plan to continue to engage, in negotiations in an effort to address and resolve the concerns expressed in the U.S. Statement of Interest. The parties are committed to rapidly advancing the discussions with the DOJ. Nevertheless, it is clear that the complex issues raised

in the U.S. Statement of Interest preclude submission of an amended settlement agreement by October 7.

Because the parties, after consultation with the DOJ, have determined that the Settlement Agreement that was approved preliminarily in November 2008 will be amended, plaintiffs respectfully submit that the Fairness Hearing should not be held, as scheduled, on October 7. To continue on the current schedule would put the Court in a position of reviewing and having participants at the hearing speak to the original Settlement Agreement, which will not be the subject of a motion for final approval.

The interests of class members and of judicial economy will not be well served by holding a hearing on the present Settlement Agreement. In fact, depending on the contours of the amended settlement agreement, some objectors may no longer object and would choose not to travel to New York at all for the hearing. In any event, it is certain that holding a hearing on October 7 will not afford all those interested with an opportunity to review and comment on the terms of the amended settlement agreement.

Plaintiffs also are uncertain, at this stage, whether any additional form of notice, however limited, might be required. They cannot address that issue until the scope and effect of the amended settlement agreement on class members is determined.

Accordingly, because the parties intend to amend the Settlement Agreement and need adequate time to negotiate amendments among themselves and with the DOJ, plaintiffs respectfully request that the Court adjourn the Fairness Hearing scheduled for October 7, 2009.

Plaintiffs also respectfully request that the Court schedule a status conference, for the purpose of discussing the parties' progress, on November 6, 2009, or at a date and time of the

Court's convenience. At that time, the parties expect that they will be prepared to present to the Court a schedule for further proceedings, including a Fairness Hearing, in this case.

Google has agreed that plaintiffs may represent that it does not oppose this motion.

Dated: September 22, 2009

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By:

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